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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,894	03/09/2004	David J. McKenna SR.	23554B	5053

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,894

Applicant(s)

MCKENNA, DAVID J.

Examiner

Tri M. Mai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 10-19 has been renumbered 1-10.

Note 37 CFR 1.75(g): **The least restrictive claim should be presented as claim number 1**, and all dependent claims should be grouped together with the claim or claims to which they refer to the extent practicable

2. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 defines a second interior end wall different from the specification and from claim

1. Claim 1 defines the second interior end wall including the hypotenuse panel. Claim 8 defines the second interior end wall as having without the hypotenuse panel. Furthermore, the specification defines the second interior end wall including the hypotenuse panel "Each **second interior end** wall 52 has a hypotenuse panel 62", pg. 4, ln. 17.

3. Claim 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicholls et al. (2986320), or in the alternative, over Nicholls in view of Alliance (GB 964940). Nicholls teaches a 1st side 23, a first interior end wall 30, a second sidewall 24, a second interior end wall 34 including a seam at. Please note claim 1 defines the hypotenuse as a part of the second interior end wall. Thus 34 can be called the second interior end wall.

In the alternative, Alliance teaches that it is known in the art to provide an edge abutment at between a hypotenuse panel 17 and an inner panel 14 as shown in Fig. 2. It would have been obvious to one of ordinary skill in the art to provide an edge abutment in Nicholls as taught by Alliance to save paper and/or to provide an alternative engagement means.

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4. Claim 1-6, and 8-9 are rejected under 35 U.S.C. 102(e) or 102(b) as being anticipated by Casanovas (6378764 (102e date)), WO99/17995 (102b date)). Casanovas teaches a container having a first sidewall 3, a first interior end wall (bottom 18 in Fig. 8), a second sidewall 14, a second interior end wall (upper portion 18 in Fig. 8) including a seam delineates an upright hypotenuse panel.

Regarding claim 8, note the bottom panel 2, a first sidewall 3, an end wall 4, a second sidewall 14, a first interior end wall (bottom 18 in Fig. 8), a second interior end wall (upper portion 18 in Fig. 8), a hypotenuse panel (adjacent upper portion 18 including end portion 15).

5. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Oosterbaan (5992735). Oosterbaan teaches a bottom panel, first sidewall 4, end wall 3, a second sidewall wall 4', a first interior end wall, a second interior end wall 12'', and a hypotenuse panel (at least a portion of the hypotenuse panel, Furthermore, portion 12 or 12' can be called hypotenuse panel) extending between the first sidewall and the 2nd interior end wall.

6. Claims 1, and 4-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Piepho (5285956). Piepho teaches a first sidewall 22, a first interior end wall 56, a second sidewall (the adjacent abutting panel 60, and a second interior end wall formed by portion 58, 66 and the hingedly connected panel 60,.

Regarding claim 8, Piepho teaches a bottom panel 12, first sidewall 22, end wall 16, a second sidewall wall 60, a first interior end wall 56, a second interior end wall 58, and a hypotenuse panel 66 extending between the first sidewall 22 and the interior second interior end wall 58,

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7. Claims 1, 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Fuente, Jr. (4151948) in view of Nicholls et al (2986320) or Robinson (3375967). Fuente teaches first side wall 12, 1st interior end wall 26, a second inner wall 18, and a seam that delineates an upright hypotenuse panel 32. Fuente meets all claimed limitations except for the second sidewall. Either Nicholls or Robinson teaches that it is known in the art to provide a second sidewall at 24 and 32 respectively. It would have been obvious to one of ordinary skill in the art to provide a first panel in Fuente, Jr. as taught by Nicholls to provide added reinforcement.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

